

EXHIBIT 1

STATE OF NORTH CAROLINA

File No.

19-CVS- 22818

Mecklenburg

County

In The General Court Of Justice

☐ District ☒ Superior Court Division

Name And Address Of Plaintiff 1

The Avenues at Ayrley Homeowners Association
c/o Law Offices of Amos & Kapral, LLP
1331 N. Center Street

Hickory

NC 28601

Name And Address Of Plaintiff 2

Nationwide Mutual Insurance Company

GENERAL

CIVIL ACTION COVER SHEET

☒ INITIAL FILING ☐ SUBSEQUENT FILING

Rule 5(b) of the General Rules of Practice for the Superior and District Courts

VERSUS

Name And Address Of Defendant 1

Nationwide Mutual Insurance Company
c/o Mike Causey, Insurance Commissioner as Registered Agent
1201 Mail Service Center

Raleigh

NC 27699

**Name And Address Of Attorney Or Party, If Not Represented
(complete for initial appearance or change of address)**

T. Dean Amos and Dawn A. Hanzlik-Hexemer
Law Offices of Amos & Kapral, LLP
1331 North Center Street

Hickory

NC 28601

Summons Submitted

☒ Yes ☐ No

Telephone No.

(828) 855-3152

Cellular Telephone No.

NC Attorney Bar No.

14024 & 45316

Attorney Email Address

dean@amoskapral.com & dawn@amoskapral.com

☒ Initial Appearance in Case ☐ Change of Address

Name Of Firm

Law Offices of Amos & Kapral, LLP

Fax No.

(828) 855-3154

Summons Submitted

☐ Yes ☐ No

Counsel For

☒ All Plaintiffs ☐ All Defendants ☐ Only: (list party(ies) represented)

☒ Jury Demanded In Pleading ☐ Complex Litigation ☐ Stipulate to Arbitration

TYPE OF PLEADING

(check all that apply)

- ☐ Amend (AMND)
- ☐ Amended Answer/Reply (AMND-Response)
- ☐ Amended Complaint (AMND)
- ☐ Assess Costs (COST)
- ☐ Answer/Reply (ANSW-Response) (see Note)
- ☐ Change Venue (CHVN)
- ☒ Complaint (COMP)
- ☐ Confession Of Judgment (CNFJ)
- ☐ Consent Order (CONS)
- ☐ Consolidate (CNSL)
- ☐ Contempt (CNTP)
- ☐ Continue (CNTN)
- ☐ Compel (CMPL)
- ☐ Counterclaim (CTCL) Assess Court Costs
- ☐ Crossclaim (list on back) (CRSS) Assess Court Costs
- ☐ Dismiss (DISM) Assess Court Costs
- ☐ Exempt/Waive Mediation (EXMD)
- ☐ Extend Statute Of Limitations, Rule 9 (ESOL)
- ☐ Extend Time For Complaint (EXCO)
- ☐ Failure To Join Necessary Party (FJNP)

- ☐ Failure To State A Claim (FASC)
- ☐ Implementation Of Wage Withholding In Non-IV-D Cases (OTHR)
- ☐ Improper Venue/Division (IMVN)
- ☐ Including Attorney's Fees (ATTY)
- ☐ Intervene (INTR)
- ☐ Interplead (OTHR)
- ☐ Lack Of Jurisdiction (Person) (LJPN)
- ☐ Lack Of Jurisdiction (Subject Matter) (LJSM)
- ☐ Modification Of Child Support In IV-D Actions (MSUP)
- ☐ Notice Of Dismissal With Or Without Prejudice (VOLD)
- ☐ Petition To Sue As Indigent (OTHR)
- ☐ Rule 12 Motion In Lieu Of Answer (MDLA)
- ☐ Sanctions (SANC)
- ☐ Set Aside (OTHR)
- ☐ Show Cause (SHOW)
- ☐ Transfer (TRFR)
- ☐ Third Party Complaint (list Third Party Defendants on back) (TPCL)
- ☐ Vacate/Modify Judgment (VCMD)
- ☐ Withdraw As Counsel (WDCN)
- ☐ Other (specify and list each separately)

NOTE: All filings in civil actions shall include as the first page of the filing a cover sheet summarizing the critical elements of the filing in a format prescribed by the Administrative Office of the Courts, and the Clerk of Superior Court shall require a party to refile a filing which does not include the required cover sheet. For subsequent filings in civil actions, the filing party must include either a General Civil (AOC-CV-751), Motion (AOC-CV-752), or Court Action (AOC-CV-753) cover sheet.

(Over)

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 19-CVS- 22818

THE AVENUES AT AYRSLEY
HOMEOWNERS ASSOCIATION,

Plaintiff,

v.

NATIONWIDE MUTUAL INSURANCE
COMPANY,

Defendant.

COMPLAINT
(Jury Trial Demanded)

Plaintiff, complaining of Defendant, alleges and says as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff is a North Carolina non-profit corporation, having its principal place of business in Mecklenburg County, North Carolina.
2. Upon information and belief, Defendant Nationwide Mutual Insurance Company is a property and casualty insurance carrier transacting business in the State of North Carolina, including the solicitation of customers in and procurement of insurance contracts in North Carolina.
3. This action arises by virtue of the duties and obligations of the Defendant in relation to a storm damage claim to nine (9) townhome buildings known as The Avenues at Ayrsley located in Charlotte, Mecklenburg County, NC 28273 (the "Property").
4. Jurisdiction is proper in North Carolina pursuant to N.C. Gen. Stat. § 1-75.4.
5. Venue is proper in this county pursuant to N.C. Gen. Stat. § 1-80.

V545313 12/03/19 10:34:45

PAYOR: AVENUES AT AYRSLEY HOA

PAYEE: NATIONWIDE MUTUAL

CASE#: 19CVS022818 VCAP:Y

CITA#:

21120 SC-CIVIL FEES	179.05
21124 SC-CV LAA FEES	.95
24681 JUD TECH & FAC	4.00
22120 CO FAC FEE S CV	16.00

TOTAL PAID	200.00
CO TENDERED	200.00
CHANGE	.00

0236 ID C59KLF

FACTUAL BACKGROUND

6. Defendant issued to Plaintiff a policy of insurance, number ACPBPHM2345631275 (the "Policy"), effective September 15, 2016 insuring the Property.

7. All premiums were paid in full at the time of the loss described herein.

8. Plaintiff is insured entitled to the coverages described in the Policy.

9. On or about November 30, 2016, a severe thunderstorm and/or tornado producing high winds, hail and rain caused damage to the Property, including, but not limited to, damage to the roofs and water damage to the interior of the townhomes (hereinafter collectively referred to as the "Storm Damage").

10. Plaintiff submitted a claim to Defendant seeking insurance coverage for the Storm Damage. Plaintiff requested Defendant cover the total cost (less the deductible) to repair the Storm Damage pursuant to the Policy and make available any other coverage(s) under the Policy (hereinafter referred to as the "Claim").

11. Upon information and belief, Defendant and/or its adjuster conducted an inadequate and/or improper inspection of the Property, which was used in the adjustment of the Claim.

12. Among other things, Defendant's adjustment of the Claim failed to recognize the entire scope of the Storm Damage, failed to acknowledge the extent of the Storm Damage, and did not provide adequate funds to cover the repairs from the Storm Damage.

13. Defendant and/or its agents failed to properly adjust the Claim, and Defendant improperly denied the entire scope of work necessary to repair the Property, even though the Policy provided coverage for all the Storm Damage.

14. Defendant failed to perform its contractual duty to compensate Plaintiff under the terms of the Policy for the Storm Damage. Specifically, Defendant failed and/or refused to pay, although due demand to pay an amount sufficient to cover the Storm Damage to the Property and all conditions precedent to recovery upon the Policy were carried out and accomplished by Plaintiff.

BREACH OF CONTRACT

15. Plaintiff realleges and incorporates the preceding paragraphs here by reference.

16. Pursuant to the terms of the Policy that Plaintiff purchased, upon payment of premiums to maintain the validity of the Policy, Defendant had the duty to investigate and pay the Policy benefits for claims made for covered damages, including any available additional coverages under the Policy, as a result of the Storm Damage.

17. As a result of the Storm Damage, which is a covered peril under the Policy, the Property was damaged.

18. Defendant's failure and/or refusal, as described in this complaint, to pay adequate compensation as it is obligated to do under the terms of the Policy and under the laws of the State of North Carolina, constitutes a breach of Defendant's insurance contract with Plaintiff.

19. As a direct and proximate result of Defendant's breach of contract, Plaintiff has suffered damages in excess of Twenty-Five Thousand Dollars (\$25,000.00), with the exact amount to be proven at a trial of this matter.

WHEREFORE, Plaintiff respectfully prays the Court as follows:

1. That Plaintiff have and recover a judgment against Defendant as a result of its breach of contract, in an amount in excess of Twenty-Five Thousand Dollars (\$25,000.00), with the exact amount to be proven at trial, pre-judgment interest as allowed by contract or law from

the date of the breach until the date of judgment, plus post judgment interest thereafter at the maximum legal rate of 8% per annum, until paid in full and attorney's fees and court costs as allowed by contract and/or statute;

2. That Plaintiff be afforded a trial by jury on all issues; and
3. That Plaintiff has and recover such other and further relief as the Court deems just and proper.

This the 27th day of November, 2019.

LAW OFFICES OF AMOS & KAPRAL, LLP

By: 

T. Dean Amos, NC Bar No. 14024
Dawn Hanzlik-Hexemer, NC Bar No. 45316
Attorneys for Plaintiff
1331 N. Center Street
Hickory, NC 28601
Telephone: (828) 855-3152
Facsimile: (828) 855-3154

CLAIMS FOR RELIEF

- | | | |
|--|---|---|
| <input type="checkbox"/> Administrative Appeal (ADMA) | <input type="checkbox"/> Limited Driving Privilege - Out-Of-State | <input type="checkbox"/> Product Liability (PROD) |
| <input type="checkbox"/> Appointment Of Receiver (APRC) | <input type="checkbox"/> Convictions (PLDP) | <input type="checkbox"/> Real Property (RLPR) |
| <input type="checkbox"/> Attachment/Garnishment (ATTC) | <input type="checkbox"/> Medical Malpractice (MDML) | <input type="checkbox"/> Specific Performance (SPPR) |
| <input type="checkbox"/> Claim And Delivery (CLMD) | <input type="checkbox"/> Minor Settlement (MSTL) | <input type="checkbox"/> Other (specify and list each separately) |
| <input type="checkbox"/> Collection On Account (ACCT) | <input type="checkbox"/> Money Owed (MNYO) | |
| <input type="checkbox"/> Condemnation (CNDM) | <input type="checkbox"/> Negligence - Motor Vehicle (MVNG) | |
| <input checked="" type="checkbox"/> Contract (CNTR) | <input type="checkbox"/> Negligence - Other (NEGO) | |
| <input type="checkbox"/> Discovery Scheduling Order (DSCH) | <input type="checkbox"/> Motor Vehicle Lien G.S. Chapter 44A (MVLN) | |
| <input type="checkbox"/> Injunction (INJU) | <input type="checkbox"/> Possession Of Personal Property (POPP) | |

Date

11/27/2019

Signature Of Attorney/Party

FEES IN G.S. 7A-308 APPLY

Assert Right Of Access (ARAS)
Substitution Of Trustee (Judicial Foreclosure) (RSOT)
Supplemental Procedures (SUPR)

PRO HAC VICE FEES APPLY

Motion For Out-Of-State Attorney To Appear In NC Courts In A Civil Or Criminal Matter (Out-Of-State Attorney/Pro Hac Vice Fee)

No. ☐ Additional Plaintiff(s)

No. ☐ Additional Defendant(s) ☐ Third Party Defendant(s)

Summons
Submitted

☐ Yes ☐ No

☐ Yes ☐ No

☐ Yes ☐ No

☐ Yes ☐ No

☐ Yes ☐ No

Plaintiff(s) Against Whom Counterclaim Asserted

Defendant(s) Against Whom Crossclaim Asserted